

A regular meeting of the Town Council of the Town of Apex, North Carolina, was duly held on August 22, 2023 at 6:00 p.m. in the Apex Town Hall Council Chamber, 73 Hunter Street, Apex, North Carolina. Mayor Jacques Gilbert presiding.

Councilmembers Present: Mayor Jacques Gilbert

Councilmembers Absent:

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Mayor Gilbert introduced the following resolution, a summary of which had been provided to each Councilmember, a copy of which was available with the Clerk to the Town Council and which was read by title:

A RESOLUTION APPROVING AN INSTALLMENT FINANCING AND SECURITY AGREEMENT TO FINANCE MOTOR VEHICLES AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS

WHEREAS, the Town of Apex, North Carolina (the “*Town*”) is a political subdivision validly existing under the constitution, statutes and laws of the State of North Carolina (the “*State*”);

WHEREAS, the Town has the power, pursuant to the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

WHEREAS, the Town Council of the Town (the “*Town Council*”) has determined that it is in the best interest of the Town to enter into an installment financing and security agreement under North Carolina General Statutes Section 160A-20 (the “*Agreement*”) with Pinnacle Bank (the “*Lender*”) in order to obtain funds to purchase various items of motor vehicles (the “*Vehicles*”) and pay costs of executing and delivering the Agreement, and to put a security interest and lien on the Vehicles in favor of the Lender in order to provide security for the Town’s obligations under the Agreement;

WHEREAS, the Town will enter into the Agreement in an aggregate principal amount of not to exceed \$1,785,000;

WHEREAS, there has been made available to the Town Council in the office of the Town’s Finance Director the form of the Agreement which the Town proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing; and

WHEREAS, it appears that the Agreement is in appropriate form and is an appropriate instrument for the purposes intended;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, North Carolina as follows:

Section 1. **Ratification of Prior Actions.** All actions of the Interim Town Manager and the Finance Director, and their respective designees, in effectuating the proposed financing are approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Agreement.

Section 2. **Approval, Authorization and Execution of Agreement.** The Town Council approves the acquisition and financing of the Vehicles in accordance with the terms of the Agreement, which will be a valid, legal and binding obligation of the Town in accordance with its terms. The Town Council approves the amount advanced by the Lender to the Town pursuant to the Agreement in an aggregate principal amount not to exceed \$1,785,000 at an interest rate of 3.90%, such amount to be repaid by the Town to the Lender as provided in the Agreement. The form, terms and content of the Agreement are in all respects authorized, approved and confirmed. The Mayor, the Interim Town Manager, the Town Attorney, the Finance Director and the Town Clerk, or their respective designees (the “*Authorized Officers*”), are authorized, empowered and directed to execute and deliver the Agreement for and on behalf of the Town, including necessary counterparts, in substantially the form made available to the Town Council, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the approval of the Town Council of any and all such changes, modifications, additions or deletions. From and after the execution and delivery of the Agreement, each Authorized Officer is authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

Section 3. **Further Actions.** Each Authorized Officer is designated as the Town’s representative to act on behalf of the Town in connection with the transactions contemplated by the Agreement. The Authorized Officers are authorized and directed to proceed with acquisition and financing of the Vehicles in accordance with the terms of the Agreement, and to seek opinions on matters of law from the Town Attorney, which the Town Attorney is authorized to furnish on behalf of the Town, and opinions of law from such other attorneys for all documents contemplated under this Resolution as required by law. The Authorized Officers are authorized to designate one or more employees of the Town to take all actions which they are authorized to perform under this Resolution, and each is in all respects authorized on behalf of the Town to supply all information pertaining to the transactions contemplated by the Agreement. The Authorized Officers are authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Agreement or as they may deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution and the on-going administration of the Agreement. Any and all acts of the Authorized Officers may be done individually or collectively.

Section 4. **Bank Qualification.** The Town hereby designates the Agreement as a "qualified tax-exempt obligation" for purposes of Internal Revenue Code Section 265(b)(3).

Section 5. **Severability.** If any section, phrase or provision of this Resolution is for any reason declared invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. **Repealer.** All motions, orders, resolutions, ordinances and parts thereof in conflict herewith are repealed.

Section 7. **Effective Date.** This Resolution is effective on the date of its adoption.

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On motion of Councilmember _____, seconded by Councilmember _____, the foregoing resolution entitled “**A RESOLUTION APPROVING AN INSTALLMENT FINANCING AND SECURITY AGREEMENT TO FINANCE MOTOR VEHICLES AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” was duly approved by the following vote:

AYES:

NAYES:

STATE OF NORTH CAROLINA)
) ss:
TOWN OF APEX)

I, Allen Coleman, Clerk to the Town Council of the Town of Apex, North Carolina, **DO HEREBY CERTIFY** that the foregoing is a true and exact copy of a resolution entitled “**A RESOLUTION APPROVING AN INSTALLMENT FINANCING AND SECURITY AGREEMENT TO FINANCE MOTOR VEHICLES AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” adopted by the Town Council of the Town of Apex, North Carolina at a regular meeting held on the 22nd day of August, 2023.

WITNESS my hand and the corporate seal of the Town of Apex, North Carolina, this the 22nd day of August, 2023.

Allen Coleman
Clerk to the Town Council
Town of Apex, North Carolina